



Signed: July 27, 2010

EDWARD D. JELLEN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
DAVID HUETE,

Case No. 10-42426 EDJ
Chapter 7

Debtor. /

RAYLENE HUETE,

Adv. No. 10-04137 AJ

Plaintiff,

vs.

DAVID HUETE,

Defendant. /

MEMORANDUM

The above-captioned adversary proceeding came on for status conference July 26, 2010. Both parties appeared, without counsel. Plaintiff Raylene Huete ("Raylene") contends that David Huete, the above-named debtor ("David"), owes her a property equalization payment by virtue of certain orders entered by the Contra Costa Superior Court in Case No. D01-03339 entitled Huete v. Huete. By this adversary proceeding, she requests this court to liquidate the

Memorandum

1 amount of such property equalization payment, and to determine that
2 the resulting debt is nondischargeable herein pursuant to Bankruptcy
3 Code § 523(a)(15).¹

4 David contends that property settlement debts of the type that
5 are at issue herein are dischargeable, citing Marriage of Lynn, 101
6 Cal. App. 4th 120, 123 Cal. Rptr. 2d 611 (2002).

7 The language in Lynn upon which David relies is outdated.
8 Since the enactment of the Bankruptcy Abuse Prevention and Consumer
9 Protection Act of 2005 ("BAPCPA"), effective October 17, 2005, most
10 non-support debts (as well as most support debts, see Bankruptcy
11 Code § 523(a)(5)) incurred in connection with a divorce proceeding
12 are not dischargeable in a bankruptcy case. Bankruptcy Code
13 § 523(a)(15).

14 As to the appropriate forum, since the enactment of BAPCPA, the
15 bankruptcy court and any non-bankruptcy forum of competent
16 jurisdiction exercise concurrent jurisdiction as to actions grounded
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18 ¹Bankruptcy Code § 523(a)(15), in effect for bankruptcy
19 cases filed on or after October 17, 2005, provides:

20 (a) A discharge under section 727 . . . of this title
21 does not discharge an individual debtor from any debt--

22

23 (15) to a spouse, former spouse, or child of the debtor
24 and not of the kind described in paragraph (5) that is
25 incurred by the debtor in the course of a divorce or
26 separation or in connection with a separation
agreement, divorce decree or other order of a court of
record, or a determination made in accordance with
State or territorial law by a governmental unit.

1 on Bankruptcy Code § 523(a)(15). Bankruptcy Code § 523(c); 28
2 U.S.C. § 1334(b).

3 Here, the court believes that this matter is best heard by the
4 Contra Costa Superior Court, State of California. This is so
5 because state law issues predominate. Also, the nature and extent
6 of prior rulings by the Contra Costa Superior Court may be at issue.
7 The outcome will not impact the administration of David's bankruptcy
8 estate, nor will such administration be delayed by this court's
9 deferral to the Superior Court. See In re Tucson Estates, Inc., 912
10 F.2d 1162 (9th Cir. 1990).

11 Accordingly, this court will issue its order abstaining from
12 hearing this adversary proceeding, and vacating the automatic stay
13 to permit Raylene to seek relief in the Superior Court.

14 *** END OF MEMORANDUM ***
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COURT SERVICE LIST

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Memorandum

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